IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No. 924 of 2001.

Judgment reserved on May 31, 2007.

Date of decision: June 18, 2007.

Ms. Parkash Anand …**Petitioner.**

Versus

State of Himachal Pradesh & others …**Respondents.**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioners:	**Mr. S.S.Mittal, Senior Advocate, with Mr. Dev Raj Dev, Advocate.**
For respondents 1 and 2	**Mr. Rajan Dewan, Additional Advocate General.**
For respondent No. 3	**Mr. Shrawan Dogra, Advocate.**

Dev Darshan Sud, J. (Oral).

This writ petition has been filed by the petitioner praying that the superannuation of the petitioner on the basis of change of date of birth having been effected in her service record by ante dating it from 12.6.1948 to 12.6.1942 be declared illegal and for

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[1] *Whether reports of Local Papers may be allowed to see the judgment?*

grant of consequential benefits. The petitioner had submitted that she was recruited as Gram Sewika and promoted as Mukhya Sewika in the year 1979. She submits that she had passed her Matriculation Examination from the Himachal Pradesh Board of School Education in the year 1976, and her date of birth as recorded in her Matriculation Certificate was 12.6.1948. Earlier to this, the petitioner had qualified her Honors in Hindi (Prabhakar) examination from the Punjab University and had received training from the Jamia Milia University. The petitioner submits that her date of birth had been correctly recorded as 12.6.1948 in her service book which was authenticated by Chairman, Functional Committee, Family and Child Welfare Project, Kullu. She submits that she was surprised when she was informed on 30.6.2000 that she had attained the age of 58 years and as such was superannuated from service. Petitioner submits that prior to this, no notice had been given to her by her employer and that the action of the respondents was arbitrary and illegal.

In reply, respondents 1 and 2 have denied the claim of the petitioner. They submitted that the petitioner is under the control of the Social Advisory

Board over which the State has no control. The Board in its reply has stated that the case of the petitioner is not covered by Para 7.1 of the Himachal Pradesh Financial Rules, as she had applied for correction of her date of birth after 31 years. According to them, date of birth, according to the record, is 12.6.1942 which is correct and she was required to apply for correction within two years from the date of joining service.

I have heard the learned counsel for the parties and gone through the record.

The original records were also called for by this Court. The service book shows that there is smudging of the date of birth of the petitioner. The entry in Column 5 of the Service Book reads:

5.	**"Date of Birth by Christian era as nearly as can be ascertained-**	**12.6.4 .** **Twelfth June Ninteen hundred and forty only."**	

The record shows that when the date of birth is recorded in figures, it reads 12.6.4 . The other figure after this is smudged. In words, the entry is Twelfth June Ninteen hundred and forty….only. The word after four has been smudged with pen/ bal pen, although the letter 't' and the loop of letter 'h' is slightly visible. 12.6.1942 has been written in red ink and there are circles with

brown pencils around the entry prior to this. Below this, an entry has been made by the Chairman, Functional Committee, Child Welfare Project, Kullu stating that date of birth of Parkash Anand as 12.6.1948 is correct. From the record which was produced before the Court, I do not find any notice having been sent to the petitioner stating that the date of birth of the petitioner was 12.6.1942. The case set up by the respondents that she had to approach this Court within two years in accordance with Himachal Pradesh Financial Rules cannot be accepted.

The Hon'ble Supreme Court in State of Orisa v. Dr. (Miss) Binapani Dei and others (AIR 1967 SC 1269) has held that the principles of natural justice should be observed before any action involving civil consequences is taken. The Hon'ble Supreme Court held:

> **".....It is true that the order is administrative in character, but even an administrative order which involves civil consequences, as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps**

> were admittedly taken, the High Court was, in our judgment, right in setting aside the order of the State. (Page 1272 Para 12)".

This decision has been reiterated in a number of decisions subsequently.

Admittedly, the record was maintained by the respondents who were the custodian of the service record of the petitioner. It cannot be said that the alteration has been made by the petitioner. The change which has been made by interpolation, erasing, smudging also cannot be attributed to the petitioner. There is no explanation as to why the decision of the Chairman has not been accepted. Morever, as observed by me, the principles of natural justice have been violated. In these circumstances, I hold that action prejudicial to the petitioner has been taken by the respondents in grave violation of Article 14 of the Constitution of India.

On the question of relief, even if the date of birth of the petitioner is taken as 12.6.1948, she cannot be ordered to be reinstated in service. No interim relief was asked for by the petitioner, nor was any application for early hearing moved. This part of the

relief prayed for by the petitioner would thus become infructuous. Admittedly, the petitioner has been deprived of three years of service. She cannot be given the entire wages. It is in these circumstances that grant of compensation is being considered and decided. The ends of justice would be met in case the petitioner is awarded a sum of Rs.50,000/- as compensation by the respondents. This writ petition is accordingly disposed of. There shall be no order as to costs.

June 18, 2007 (PC). (Dev Darshan Sud), J.